IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE EIGHTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 8796 of 1998

Between:

B.Chandrasekhara Reddy S/o B.P.G. Reddy, Singareni Colleries,
Kothagudem, Code:No.0020076

..... PETITIONER

AND

1 The Chairman & Managing Director,
Kothagudem, Bhadrachalam Road,
Khammam District.
2 The Director (Personnel)
Kothagudem, Bhadrachalam Road,
Khammam District.
3 B.Vasu S/o Satyanarayana Code No: 20000
Godavarikhani. (Dismissed for default as per Court Order dt:5.9.2001
4 J.Naga Raju S/o Subarahmanyam, Code No. 20092.
Ramakrishna Puram (Dismissed for default as per Court Order dt:5.9.2001)
5 R.Dwaraka S/o Atma Rama Rao Code.No: 19944, Godavarikhani
(dismissed for default as per Court Order dt:5.9.2001)
6 M.Narsi Reddy, S/o Seetharami Reddy Code.No: 19986, Manuguru.
7 K.G.B.Tilak S/o K.G.Vadivelu Code.No: 19994, Godavarikhani
(dismissed for default as per Court Order dt:5.9.2001)
8 M.Naga Raju S/o Papanna Code.No: 21496, Sri Rampur.
(dismissed for default as per Court Order dt:5.9.2001)
9 P.Muralikrishna S/o Subba Rao Code.No: 19863, Godavarikhani
(dismissed for default as per Court Order dt:5.9.2001)
10 K.U.P.S.Srinivas S/o Rama Mohan Rao, Code.No: 19635, Godavarikhani
(dismissed for default as per Court Order dt:5.9.2001)
11 N.V.Rajasekhar Rao S/o Venkata Rao Code.No: 19936, Godavari Khani
(dismissed for default as per Court Order dt:5.9.2001)
12 M.Narasimha Rao S/o Pedda Ramulu, Code.No: 19960, Godavarikhani

(dismissed for default as per Court Order dt:5.9.2001)

13 M.N.V.Ramana S/o Sitarama Rao Code.No: 20018
Godavarikhani
dismissed for default as per Court Order dt:5.9.2001

14 U.V. Durga Prasad S/o Srihari Rao Code.No: 19902
Godavarikhani (dismissed for default as per Court Order dt:5.9.2001)

15 K.Venkateswara Rao S/o Suryanarayana, Code.No: 19889
Godavarikhani, (dismissed for default as per Court Order dt:5.9.2001)

16 P.Subrahmanyam S/o P.V.Ramana Murthy Code.No: 19619
Godavarikhani, (dismissed for default as per Court Order dt:5.9.2001)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an Order Direction or Writ particularly one in the nature of Writ of Mandamus by calling for the records and set aside the letter No.C-20/2031, dt:19.9.97 of the 2nd respondent as illegal, unconstitutional and direct the respondents to promote the petitioner as Executive Engineer w.e.f. 29.9.95, the date on which his juniors were promoted with all attendant benefits.

Counsel for the Petitioner:MR.K.CHIDAMBARAM

Counsel for the Respondent Nos.1,2 & 6: MR.K.SRINIVASA MURTHY

The Court made the following :

O R D E R:

This writ petition is filed challenging letter No.C-20/2031, dated 19-09-1997 issued by the 2nd respondent and seeking a direction to declare the same as arbitrary, illegal and consequently direct the respondents to promote the petitioner as

Executive Engineer with effect from 29.09.1995, on which date, his juniors were promoted with all consequential benefits.

It is the case of the petitioner that on 21.12.1987 he was appointed as Junior Executive Trainee at Godavarikhani Mines and later transferred to Bellampalli OCP (P) for Phase-II Training. On successful completion of the departmental test and after the training period of one year, he was appointed as Assistant Engineer in E-2 Grade at Bellampalli OCP (P) on 21.12.1998. The petitioner asserted that his performance for the years 1988-89, 1989-90, 1990-91, 1991-92 & 1992-93 has been quite satisfactory and no adverse remarks were there and no letters have been issued either from the Corporate Office or from the Area Office pointing out any adverse remarks about his performance. But to his utter dismay, the remarks made in the Performance Appraisal Report for the year 1993-94 (appraisal was made by Sri M.Baddi Raju, Executive Engineer/Open case, Bellampalli (P) have been referred to the petitioner vide letter No.36/2028, dated 14.11.1994, which is to the following effect:

"1) Performance against Targets etc; Partly fulfilled

2) Health: Frequently sick he will produce

3) Fitness: For Promotion: Not now"

The petitioner submitted a detailed explanation with documentary evidence and the management was kind enough to expunge the remarks made against him in the Performance Appraisal Report for the year 1993-94 vide letter No.C-36/1570, dated 28.09.1995 of Director (Per) and letter No.C-36/1609, dated 05.10.1995. A Departmental Committee was constituted in the year 1993-94 for considering the promotion of the petitioner and other similarly situated persons to the post of Executive Engineer, Grade-III. However, though the management expunged the remarks in the Appraisal Report for the year 1993-94, had issued a warning letter also to the Appraiser (Reporter) for having written the performance appraisal

casually without paying much attention to the performance and work of the petitioner. However, in the meanwhile, on 29.09.1995 many of his juniors were promoted by the Departmental Promotion Committee (for short 'DPC'), which was constituted for the year 1993-94. Since the remarks against him in the Performance Appraisal Report were expunged, he filed a representation seeking reconsideration of his case for promotion by the DPC. In the meanwhile, the petitioner was also promoted on the basis of merit in the DPC constituted for the year 1995-96. It is the case of the petitioner that he is entitled for being considered for promotion to the post of Engineer, Grade–III on par with his juniors, who were promoted with effect from 29.09.1995. The respondent-management has issued the impugned letter, dated 19.09.1997 stating that his latest representation, dated 20.08.1997 requesting for promotion with effect from 29.09.1995 has been examined and it was found that he was considered for promotion by the DPC along with other eligible candidates, but having regard to the level of performance, they were not recommended for promotion. Expunging of remarks in the Performance Appraisal Report for 1993-94 has no bearing on his promotion, as the DPC while recommending a candidate for promotion takes into account the level of performance as reflected from the Performance Appraisal Report for the review period. Earlier, the petitioner was not recommended for promotion to the post in view of the performance being rated as 'Adequate' for two consecutive years i.e., 1993-94 and 1994-95. As there was improvement in the performance in the recent years, his case was recommended for promotion to the post of Executive Engineer and accordingly, he was promoted with effect from 01.06.1997. No further correspondence in the matter will be entertained. Aggrieved by the same, the present writ petition is filed.

On behalf of respondents 1 and 2, a detailed counter affidavit has been filed denying the allegations made by the petitioners. It is asserted in the counter that the petitioner was under a mistaken notion that he was not promoted in view of the remarks made in the Performance Appraisal Report for the year 1993-94 and also

the fact that expunction of remarks made in the Performance Appraisal Report was communicated to him vide letter No.C-36/1570, dated 28.09.1995, while the Office Order of promotion of 75 Executives, including the juniors of the petitioner, was issued vide office Order No.C-50, dated 29.09.1995. The decision to expunge the remarks in the Performance Appraisal Report of the petitioner was taken at the same time when the Departmental Promotion Committees were convened. Therefore, the contention of the petitioner that as the remarks from the Performance Appraisal Report were expunged, he should have been promoted with effect from 29.09.1995 is not tenable. The absence or expunging of remarks from the Performance Appraisal Reports of an executive is not the only criteria for promoting an executive to a higher grade, but the ratings in the Performance Appraisal Report shall be taken into consideration.

The learned counsel for the petitioner contended that the communication, dated 28.09.1995 was received by the petitioner and the promotions of his juniors, on 29.09.1995 as contended by the management were simultaneously done. But that does not mean that the report as to the expunging of remarks in the Performance Appraisal Report was placed before the Departmental Selection Committee at the time when the Selection Committee sat on 16.09.195. Obviously, it could not have been placed before the Selection Committee for the reason that the letter as to the expunging of remarks were communicated through a letter dated 29.09.1995 whereas the selection Committee sat on 16.09.1995.

Per contra, the learned counsel for the respondent contended that since the decision was taken simultaneously within a span of one day, it must be deemed that expunged report, which was placed before the Selection Committee was taken into consideration by the Selection Committee. Apart from this, the very selection process is not depended only on the remarks made in the Performance Appraisal Report, but some more inputs have to be taken into consideration, which is the

criteria for promoting an Executive to a higher grade. Mere expunging of remarks from the Performance Appraisal Report itself has no bearing for considering the case of the petitioner by the Selection Committee.

I have given earnest consideration to the respective submissions made by both the learned counsel and gone through the material made available on record. It is seen that the first communication was received by the petitioner on 14.11.1994 in reference No.C-36/2028 and the same reads as follows:

This is to inform you that the following remarks appear in your Performance Appraisal Report for 1993-94:

Performance against targets/ : Partly fulfilled

Tasks/objectives assigned.

Health : Frequent Sick he will produce

Fitness for ptomotion : Not just now.

Not gained sufficient knowledge for promotion.

1. *Irresponsible way of working*
2. *Not taking any initiation.*

You may, if so desire, make representation against the remarks, within a month from the date of receipt of this letter, as laid down in the letter No.C/630, dated 21.03.1988".

There was some mistake in the letter, dated 28.09.1995 addressed to the petitioner as to the year of the Performance Appraisal Report. It was mentioned as 1994-95 instead of 1993-94 and the same was corrected and communicated to the petitioner by another letter, dated 05.10.1995. The contents of the impugned letter, dated 19.03.1997 has been repeated in the counter filed by the respondents stating that the remarks, which were made in the Performance Appraisal Report have no

bearing since the case of the petitioner was considered along with other eligible candidates and the criteria of Performance Appraisal is relevant and not the remarks. It is very curious to hold that respondent authorities on the one hand has taken a stand that the Selection process is based on the Performance Appraisal Report and on the other hand, it has taken a stand that expunging of remarks from the Performance Appraisal Report has no bearing for consideration. It is the case of the management that the Departmental Selection Committee, which met on 16.09.1995 looked into the Performance Appraisal Report for the year 1993-94 and took a stand to expunge the remarks. Therefore, it must be deemed that the Selection Committee has taken cognizance of expunging of remarks. The Departmental Selection Committee met on 16.09.1995 whereas the communication received by the petitioner was dated 28.09.1995 i.e., one day before the promotion of his juniors on 29.09.1995 to the post of Engineer Grade-III. It is very difficult to accept the contention of the respondents that Performance Appraisal Report is the basis for the relevant period, but at the same time, expunging of remarks from Performance Appraisal Report were not taken into consideration while considering the promotion of the petitioner by the DPC on 16.09.1995. The matter was not placed before the DPC after expunging remarks from the Performance Appraisal Report for 1993-94. The Departmental promotion Committee could have taken a different view and recommended the case of the petitioner for promotion to the post of Executive Engineer had the remarks expunged placed before the Departmental Selection Committee, which sat on 16.09.1995 or by constituting another departmental Promotion Committee. But such a course of action was not adopted by the management. Therefore, I am of the considered opinion that the respondents committed an error in not considering the case of the petitioner for promotion for the year 1993-94 after expunging the remarks on 28.09.1995.

In the result, respondents are directed to constitute a fresh Departmental Promotion Committee and the matter may be placed before it to consider the case of the

petitioner for promotion for the year 1993-94 along with his juniors, if he is otherwise eligible as per law. This exercise shall be completed within three months from the date of receipt of a copy of this order.

The writ petition is allowed to the extent indicated above. No order as to costs.

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C.V.RAMULU.J.,

08.06.2005

c.c.in one week

B/o

tjs

To

1) 2 CD copies

2) 1 CC to MR.CHIDAMBARAM